

RECEIVED

By Office of the Commission Secretary at 10:14 am, Jul 10, 2017



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-32-B
AGENDA ITEM
For meeting of July 13, 2017
SUBMITTED LATE

July 10, 2017

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *JSW for LJS*
Acting General Counsel

Robert M. Knop *JSW for RMK*
Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: AO 2017-07 (Sergeant at Arms) Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on June 13, 2017.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2017-07

2

3 Hon. Paul D. Irving

4 Sergeant at Arms

5 U.S. House of Representatives

6 H-124 Capitol

7 Washington, DC 20515-6634

8

9 Dear Mr. Irving:

DRAFT B

10 We are responding to your advisory opinion request concerning the application of the
11 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations to the proposed use of campaign contributions by Members of the United States
13 House of Representatives (“Members of Congress” or “Members”) for residential security
14 systems. The Commission concludes that in the absence of a specific threat to an individual
15 Member, the use of campaign funds to pay for costs associated with installing or upgrading a
16 security system at the Member’s residence would constitute an impermissible conversion of
17 campaign funds to personal use, under the Act and Commission regulations.

18 **Background**

19 The facts presented in this advisory opinion are based on your advisory opinion request
20 received on June 21, 2017, and supplemental letter received on June 29, 2017.

21 As the Sergeant at Arms, you are the chief law enforcement official for the United States
22 House of Representatives. Advisory Opinion Request at AOR001. You state that “Members
23 receive threatening communications on a daily basis” and that the incidence of such threats is
24 increasing. *Id.* In calendar year 2016, the United States Capitol Police investigated 902
25 threatening communications received by Members, while in approximately the first six months
26 of 2017 they have investigated 950 such communications. *Id.* You characterize this as “the new
27 daily threat environment faced by Members of Congress.” *Id.* You indicate that the anonymous

1 nature of many of the threats makes the Capitol Police’s investigation of those threats
2 particularly challenging, and you contend that “Members of the U.S. House of Representatives
3 require a residential security system due to the threat environment.” AOR002.

4 **Question Presented**

5 *May Members of Congress use campaign contributions to install or upgrade security*
6 *systems at their residences?*

7 **Legal Analysis and Conclusions**

8 No, Members of Congress may not use campaign contributions to install or upgrade
9 security systems at their residences in the absence of specific threats to individual Members,
10 because such payments would constitute the impermissible conversion of campaign funds to
11 personal use.

12 The Act identifies six categories of *permissible* uses of contributions accepted by a
13 federal candidate. They are: (1) otherwise authorized expenditures in connection with the
14 candidate’s campaign for federal office; (2) ordinary and necessary expenses incurred in
15 connection with the duties of the individual as a holder of federal office; (3) contributions to
16 organizations described in 26 U.S.C. § 170(c); (4) transfers, without limitation, to national,
17 state, or local political party committees; (5) donations to state and local candidates subject to
18 the provisions of state law; and (6) any other lawful purpose not prohibited by 52 U.S.C.
19 § 30114(b). 52 U.S.C. § 30114(a); see also 11 C.F.R. § 113.2(a)-(e).

20 The Act prohibits federal candidates from converting contributions they have accepted to
21 their own “personal use.” 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to
22 personal use occurs when a contribution or amount is used “to fulfill any commitment,

1 obligation, or expense” of a federal candidate or a federal officeholder “that would exist
2 irrespective” of the federal candidate’s campaign or the federal officeholder’s duties. 52 U.S.C.
3 § 30114(b)(2); see also 11 C.F.R. § 113.1(g).

4 The Act and Commission regulations provide a non-exhaustive list of items that would
5 constitute a prohibited personal use *per se*, none of which applies here. See 52 U.S.C.
6 § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as
7 payments for residential security systems, the Commission determines on a case-by-case basis
8 whether such expenses would fall within the definition of “personal use.” 11 C.F.R.
9 § 133.1(g)(1)(ii). The Commission has long recognized that if a candidate “can reasonably
10 show that the expenses at issue resulted from campaign or officeholder activities, the
11 Commission will not consider the use to be personal use.” Personal Use of Campaign Funds, 60
12 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

13 The Commission has previously concluded that payments for, or improvements to, a
14 residential security system, under certain circumstances, do not constitute personal use under
15 the Act and Commission regulations. In Advisory Opinion 2011-17 (Giffords), Advisory
16 Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), Members of Congress
17 faced specific and ongoing threats to the safety of themselves and their families. In Advisory
18 Opinion 2009-08 (Gallegly), Representative Gallegly and his wife received a threatening letter
19 from an individual who also trespassed on their property multiple times, some of which
20 constituted violations of a restraining order the Galleglys had obtained. In Advisory Opinion
21 2011-05 (Terry), an individual caused disturbances at Representative Terry’s office and made
22 verbal threats to harass him at his residence, left him harassing voicemail messages with

1 references to the location of his residence and further threats to harass him there, and went to
2 Representative Terry's residence and neighborhood on multiple occasions. In Advisory
3 Opinion 2011-17 (Giffords), Representative Giffords was shot and seriously wounded at an
4 event sponsored by her congressional office.

5 In all three instances, the Capitol Police recommended security upgrades to the Members'
6 residences due to the continuing threats against the specific Members. The Commission
7 concluded that the threats would not have occurred had the Members not been federal
8 officeholders and/or candidates, and that the expenses for the proposed residential security
9 upgrades would not exist irrespective of their duties as federal officeholders and/or candidates.
10 Therefore, the Commission concluded that the use of campaign funds to pay for the security
11 upgrades recommended by the Capitol Police would not constitute a prohibited personal use of
12 campaign contributions under the Act or Commission regulations.

13 The Commission has carefully considered the information provided by your office
14 regarding both (1) the current threat environment facing Members of Congress due to their
15 status as federal officeholders; and (2) the Capitol Police's threat assessment, resulting in its
16 recommendation that Members upgrade their residential security. In light of this information,
17 the Commission concludes that although Members of Congress may collectively be
18 experiencing a greater overall number of threats than in previous years, such a generalized
19 increase in threats is not sufficient alone to demonstrate that any individual Member's
20 installation or upgrade of a home security system would occur irrespective of his or her
21 campaign for federal office and/or duties as a federal officeholder. Therefore, in the absence of
22 a specific threat to an individual officeholder, the use of campaign funds for the installation or

1 upgrade of a security system at the officeholder's residence would constitute a personal use of
2 campaign contributions and would be prohibited by the Act and Commission regulations.

3 This response constitutes an advisory opinion concerning the application of the Act and
4 Commission regulations to the specific transaction or activity set forth in your request. *See*
5 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
6 assumptions presented, and such facts or assumptions are material to a conclusion presented in
7 this advisory opinion, then the requestor may not rely on that conclusion as support for its
8 proposed activity. Any person involved in any specific transaction or activity which is
9 indistinguishable in all its material aspects from the transaction or activity with respect to which
10 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
11 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
12 affected by subsequent developments in the law including, but not limited to, statutes,
13 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
14 on the Commission's website.

15

16
17
18
19
20
21

On behalf of the Commission,

Steven T. Walther,
Chairman